

No. 83-1598

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In the Supreme Court of the United States

October Term, 1983

WILLIAM C. WISWELL,
Petitioner,

vs.

STATE OF KANSAS,
Respondent.

PETITIONER'S BRIEF IN REPLY

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QUESTION PRESENTED IN REPLY

Does the Supreme Court have jurisdiction to consider this case?

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The petitioner, William C. Wiswell, respectfully suggests to the Court that the claimed infringement upon his Sixth Amendment rights and the Federal question arising therefrom was raised by petitioner's instant counsel at each and every opportunity afforded him. While the Kansas Appellate Courts in their confirming decisions may have avoided any specific address to the issue of a claimed infringement of the petitioner's constitutional right to adequate and effective counsel pursuant to the Sixth Amendment of the U.S. Constitution, the petitioner would respectfully submit to the Court the following information:

1. Petitioner, through the prior representation afforded him, was found guilty by a jury on April 16, 1982.

2. Petitioner's instant counsel entered his appearance on behalf of petitioner and filed a Motion for New Trial on April 26, 1982.

3. Petitioner's instant counsel, upon receipt of the medical records from M. D. Anderson Tumor Institute in Houston, Texas on petitioner's former counsel, Hugh Harrison Kreamer, filed a First Amended Motion for New Trial or, in the Alternative, to Arrest Judgment on May 24, 1982.

4. Included among the grounds for new trial was paragraph numbered II which stated as follows:

"II. ADEQUACY OF COUNSEL

The Defendant contends that he has a constitutional right to effective counsel under the Sixth Amendment to the U.S. Constitution and further contends that the facts and circumstances surrounding the defense that he was afforded denied him the effective and substantial aid to which he is entitled under the Sixth Amendment and, therefore, deprived him of due process of law under the Fifth and Fourteenth Amendments.

The Defendant specifically contends that his counsel's work schedule, including other substantial trial commitments and state of health, left the Defendant's counsel in such a debilitated physical condition as to cause the following errors, omissions and inadequacies of the Defendant's trial counsel. . ."

Thereafter, alphabetical specifications A through T followed.

5. After a denial of petitioner's Motion for New Trial, petitioner's Brief to the Kansas Court of Appeals contained as one of the issues, the following:

THE SIXTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA GUARANTEES A CRIMINAL DEFENDANT THE RIGHT TO COUNSEL. THE UNDISCLOSED, DEBILITATING, TERMINAL ILLNESS OF DEFENSE COUNSEL, HUGH HARRISON KREAMER, COUPLED WITH HIS PHYSICAL INABILITY TO WORK PAST 3:00 IN THE AFTERNOON TOGETHER WITH THE NECESSITY FOR HIS INGESTION OF MOOD ELEVATING DRUGS WAS SUCH THAT THE DEFENDANT, WILLIAM C. WISWELL, RECEIVED INADEQUATE AND INEFFECTIVE COUNSEL DURING HIS CRIMINAL PROSECUTION AND THE TRIAL OF HIS CASE, AND IS THEREFORE ENTITLED TO HAVE HIS CONVICTION OVERTURNED.

6. The issue with regard to competency of counsel and infringement upon petitioner's Sixth Amendment right to adequate and effective counsel was again raised by the petitioner in a Petition for Review of an Adverse Decision from the Kansas Court of Appeals which was filed in the Kansas Supreme Court on November 4, 1983.

CONCLUSION

From the foregoing, it appears clear that at each and every step of the proceedings heretofore afforded to the petitioner, the petitioner raised and complained of the adequacy and effectiveness of his former attorney for the reason that his former attorney had undisclosed, debilitating cancer which caused him to ingest pain killing and mood elevating drugs and which would not allow him to work past 3:00 o'clock in the afternoon.

From the foregoing it appears clear that a Federal question regarding the adequacy of petitioner's counsel was raised and presented ab initio.

From the foregoing, it appears clear that once the medical records from the M. D. Anderson Tumor Institute in Houston, Texas were uncovered by petitioner's instant counsel and the First Amended Motion for New Trial was filed, the petitioner, at each and every stage of the proceeding, raised and requested the appropriate Court to consider the question of adequacy and effectiveness of the representation afforded him by his trial counsel.

The petitioner respectfully prays that the Supreme Court consider and grant his Petition for Writ of Certiorari.

Respectfully submitted,

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